

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
Danville Division

McCARTHY BUILDING COMPANIES, INC.,

*Plaintiff,*

v.

TPE VIRGINIA LAND HOLDINGS, LLC, *et al.*,

*Defendants.*

Civil Action No. 4:20-cv-00057

**DEFENDANT TPE VIRGINIA LAND HOLDINGS, LLC'S**  
**AMENDED MOTION TO DISMISS AMENDED COMPLAINT**

Defendant, TPE Virginia Land Holdings, LLC ("**TPE Virginia**"), by counsel, pursuant to Federal Rule of Civil Procedure 12(b)(6), states the following as its Amended Motion to Dismiss ("**Motion**") the Amended Complaint ("**Complaint**") filed against it herein by Plaintiff, McCarthy Building Companies, Inc. ("**Plaintiff**" or "**McCarthy**").

The Complaint fails to state a claim against TPE Virginia in the present matter as a matter of law as detailed in the accompanying memorandum in support. Briefly, any claim for unjust enrichment fails as a matter of law because there is no benefit conferred to – or retained by – TPE Virginia; there is an admitted contract between the relevant parties; there are no facts alleged that TPE Virginia promised to pay; and there are no damages pled against TPE Virginia. Additionally, the remaining claims that appear to involve TPE Virginia – as a necessary party to the mechanic's lien and for declaratory judgment — seek disallowed relief. As these defects are incurable, dismissal with prejudice against TPE Virginia is warranted.

WHEREFORE, Defendant, TPE Virginia Land Holdings, LLC, by counsel, respectfully requests that this Honorable Court dismiss the Complaint against it, with prejudice, and grant it such other and further relief as the Court deems appropriate.

TPE VIRGINIA LAND HOLDINGS, LLC

/s/ David L. Amos  
Counsel

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*Counsel for Defendant, TPE Virginia Land Holdings, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of December, 2020, I caused a copy of the foregoing *Defendant, TPE Virginia Land Holdings, LLC's Amended Motion to Dismiss Verified Complaint* to be served *via* the Court's Electronic Case Filing System on all parties requesting notice thereby and/or by first-class, postage prepaid, U.S. Mail on the following parties:

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